ESTATE OF JAMES J. LEE, DECEASED

IBLA 76-550 Decided July 20, 19976

Appeal from decision of California State Office, Bureau of Land Management, rejecting color of title application CA 3479.

Affirmed.

1. Color or Claim of Title: Generally

> The possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that act. Color or claim of title must be based upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant.

APPEARANCES: Richard H. Foster, Esq., San Francisco, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Estate of James J. Lee, deceased, appeals from the March 4, 1976, decision of the California State Office, Bureau of Land Management (BLM), rejecting the Estate's application for certain lands pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1970). Appellant asserts that James J. Lee and his predecessors in interest have occupied the 10 acres for approximately a century. According to the description submitted by appellant, the land in question has the shape of a right triangle and occupies the northwest corner of the NE 1/4 SE 1/4 of section 20, T. 38 N., R. 7 W., Mount Diablo Meridian, Trinity County, California. However, the chains of title submitted by appellant in support of the application for the land actually cover two entirely separate and distinct parcels. One of those parcels, the S 1/2 NE 1/4 of section 20 was conveyed to one John R. Stoddard by the United States in Homestead Entry Patent No. 512, dated December 20, 1884. The other parcel, the SW 1/4

NW 1/4 of section 21 was conveyed by the United States by Railroad Grant Patent No. 47, dated May 9, 1896. 1/ Neither chain of title to those two parcels is relevant to the case at hand. 2/ The only document submitted bearing on this parcel of land is a copy of a deed dated July 25, 1878, conveying the land in question, as well as other land, from one Allen Davis to John R. Stoddard. There is no other document of any kind indicating that the land was ever conveyed to James J. Lee or a predecessor in interest.

[1] The Color of Title Act, 43 U.S.C. § 1068 (1970), provides that one who holds public land in good faith and under color or claim of title may receive title to the land if, among other things:

> 1. The claimant has adversely possessed the land for 20 years and has either placed valuable improvements on the land or has cultivated a portion of it; or
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> 2. The claimant has adversely possessed the land since 1901 and has paid state and local taxes on the land since that time.

The implementing regulations, 43 CFR 2540.0-5(b), label the first kind of claim "class 1" and the second kind, "class 2." Appellant's application asserts that the land is claimed under both categories.

The Board stated in Cloyd and Velma Mitchell, 22 IBLA 299, 302-303 (1975):

> Mere possession and improvement of public land by an applicant in the mistaken belief that he owns it is an insufficient basis to qualify for conveyance under the Act of December 22, 1928, as amended, 43 U.S.C. § 1068 (1970). Myrtle A. Freer, 70 I.D. 145 (1963) [Ed.: aff'd sub nom. Ritter v. Morton, 513 F.2d 942 (9th Cir.), cert. denied, 96 S.Ct. 362 (1975).] A claim or color of title must be based upon a document from a source other than the United

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1/ The BLM decision gives the date of the patent as May 9, 1896. An abstract submitted by appellant gives the date as March 14, 1896. Because the discrepancy is of no apparent consequence, we disregard it.

2/ Appellant also asserts ownership of land in the W 1/2 SE 1/4 of section 20, adjacent to the land applied for on the west side. However, appellant apparently is not claiming qualification on the basis of title to this land as no proof of title to the W 1/2 SE 1/4, section 20, was submitted in support of this application.

> States, which on its face purports to convey to the applicant the land applied for. James E. Smith, 13 IBLA 306, 312, 80 I.D. 702, 705 (1973); Marcus Rudnick, 8 IBLA 65 (1972).

Appellant disagrees with that statement of the law, particularly the last sentence. In fact, appellant believes that requiring a chain of title at all obviates the need for the law, since, if one had a chain of title, he would have good title. Appellant also states that he has met the requirements of the law as set forth in Day v. Hickel, 481 F.2d 473 (9th Cir. 1973).

Appellant's arguments appear to be somewhat ingenuous. Chain of title is not synonymous with good title, as appellant seems to suggest. Indeed, obliteration of that distinction would, as appellant states, obviate the need for the law. What the Act is concerned with are those instances where one has a chain of title or merely a deed or other instrument purporting to transfer title to the applicant, which is correct on its face, but which in actuality is defective because the land is still owned by the United States. This is essentially what the United States Court of Appeals for the Ninth Circuit said in Day v. Hickel, supra:

> The history of the Act discloses that as originally enacted in 1928 (Act of December 22, 1928, ch. 47, § 1, 45 Stat. 1069), the Color-of-Title Act provided that when the proper conditions existed "the Secretary may, in his discretion * * *" issue a patent.
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> As indicated by S.Rep. No. 732, 70th Cong., 1st Sess. (1928), accompanying the bill, the purpose of the Act was to authorize the Secretary to deal with "cases * * * where lands have been held and occupied in good faith for a long period of time under a chain of title found defective * * *." [Emphasis by the Court.] No mention was made of case of possession of land where there was no such chain of title. Thus, the history would indicate that there should be excluded from the intent of the Act, land adversely possessed by one who knew that the title was in the United States, but who had no chain of title to it.

481 F.2d at 476. Moreover, in Minnie Wharton, 4 IBLA 287, 294-5, 79 I.D. 6, 9 (1972), we stated:

> It is well established that a chain or color of title must be established, if at all, by a deed or

other writing which purports to pass title and which appears to be title to the land, but which is not good title. Peterson v. Weber County, 99 Ut. 281, 103 P.2d 652, 655 (1939); See Karvonen v. Dyer, 261 F.2d 671, 674 (9th Cir. 1958) and Henry D. Warbasse, Eugenia W. Warbasse, A-30383 (August 19, 1965).

As was pointed out in Pacific Coast Co. v. James, 5 Alaska 180, aff'd, 234 F. 595 (1916), "[o]ne cannot make his own title."

The Court of Appeals for the Ninth Circuit in discussing Minnie Wharton, supra, approved the Board's decision with respect to the interpretation of Color of Title Act, 43 U.S.C. § 1068 (1970), but reversed on other grounds. United States v. Wharton, 514 F.2d 406, 408 (9th Cir. 1975). It is clear beyond peradventure that one claiming under the Color of Title, 43 U.S.C. § 1068 (1970), must have some sort of chain of title to the land. An application under the Act must be rejected where the conveyances in a chain of title to the applicant describe different land from that applied for, as such a title chain does not give color of title to the land sought. Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1976). As it appears that no purpose would be served by hearing oral argument, the request therefor is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge